IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 582 OF 2002

Vijaykumar Shivram Bhosale & ors. ... Appellants.
Versus.
Balu Madhukar Bhosale & ors. ... Respondents.

Shri Nitin Jamdar for the Appellants.

CORAM : ABHAY S. OKA, J.

DATED : 2nd March, 2005.

P.C.:

1. Heard Shri Jamdar for the Appellants. The Appellants are the original Defendants Nos.1 to 9. The Respondents Nos.1 to 3/original Plaintiffs are the legal representatives of deceased Madhukar. The deceased Madhukar is the uncle of the Appellants Nos.1 to 3. The case of the Appellants is that the deceased Madhukar entered into an agreement for sale of the suit land in favour of the Appellant No.1 for legal necessity as the deceased Madhukar needed money for treating his wife who was sick.

2. The suit was filed by the Respondents Nos.1 to 3 for partition contending that the sale by the deceased Madhukar was not for legal necessity. It is an established fact that at the time of execution of the agreement for sale the Appellant No.1 paid a sum of Rs.5000/- to the deceased Madhukar. Subsequently the Appellant No.1 filed a suit for specific performance in

which a decree was passed and in execution of the decree, sale deed was got executed by the Appellant No.1 in his favour. It is also an admitted position that a sum of Rs.15,000/- was deposited by the Appellant No.1 in execution of the decree for specific performance and the said amount was not withdrawn by Madhukar.

3. There is a concurrent finding of fact recorded by the Courts below that the Appellant No.1-purchaser has failed to establish that the sale by Madhukar was for legal necessity. Shri Jamdar, the learned Counsel appearing for the Appellants, relied upon the Judgment of the Apex Court reported in AIR 1967 S.C. page 574 (Radhakrishnadas & another v/s. Kaluram (dead) and and after him his heirs and legal representative & others).

The Apex Court has held as under:

> "Where an alienation, by way of sale of the family property made by a Hindu father is challenged by his sons on the ground of want of legal necessity then it is now well established that what the aliencee is required to establish is legal necessity for the transaction and that it is not necessary for him to show that every bit of the consideration which he advanced was actually applied for meeting family necessity. The reason is that the alienee

> can rarely have the means of controlling and directing the actual application of the money paid or advanced by him unless he enters into the management himself."

He also relied upon another Judgment of the Apex Court reported in 1970(3) S.C.C. page 722 (Smt.Rani and another v/s.Smt.Santa Bala and others) and in particular paragraph 11 there of which reads thus:

> "11. Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstances in which the transaction was entered into. The recitals may be used to corroborate other evidence of the existence of legal necessity. The weight to be attached to the recitals varies according to the circumstances. Where the evidence which could be brought before the Court and is within the special knowledge of the person who seeks to set aside the sale is withheld, such evidence being normally not available to the alience, the recitals go to his aid with greater force and the Court may be justified in appropriate cases in raising an inference against the party seeking to

set aside the sale on the ground of absence of legal necessity wholly or partially, when he withholds evidence in his possession.

He submitted that the fact that the deceased Madhukar did not withdraw a sum of Rs.15,000/- was beyond the control of the Appellant No.1 and on that ground the finding on issue of legal necessity could not have been recorded against the Appellants.

4. After considering the oral and documentary evidence on record and after considering the recital in the agreement for sale, the Courts below have came to the conclusion that the legal necessity is not established. The trial Court has considered the entire oral and documentary evidence on record and has held that the Appellants did not discharge the burden and establish that the sale was for legal necessity. The trial Court after considering the evidence has held that the deceased Madhukar was not taking care of the original Plaintiffs and in fact the original Plaintiffs were residing with their mother i.e.wife of Madhukar at the house of their maternal uncle. The detailed findings of the trial Court have been confirmed by the Appellate Court.

5. I find no error in the approach of the Courts below. As held by the Apex Court in the case of Smt,Rani

(Supra) a mere reference in the recitals in the agreement for sale about existence of legal necessity is not by itself sufficient to come to the conclusion that the legal necessity is established. The other evidence on record is also considered by the Courts below and concurrent finding of fact has been recorded.

6. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.